

The applicant respectfully disagrees with this conclusion. The Examiner appears to allege that some of the claimed embodiments of the invention may not bring about benefits because in the eye of the Examiner the range of resiliency index as claimed is close to the resiliency indices of prior art articles. In response to this conclusion of the Examiner, the applicant offers the following comments and remarks.

The applicant was first to discover that highly resilient shoe sole materials, which are prevalent today, represent a health risk because they destabilize the wearer. These findings were published in the Journal of the American Geriatrics Society ("Shoe Sole Thickness and Hardness Influence Balance in Older Men", volume 40, pp. 1089-1094, 1992) and in the British Journal of Sports Medicine ("Athletic footwear affects balance in men", volume 28(2), 1994). The applicant then demonstrated that highly resilient sole materials destabilize humans because they diminish foot-position awareness. These findings were again published in the Journal of the American Geriatrics Society (volume 45, pp. 61-66, 1997).

The gist of applicant's invention is that low-resiliency materials improve balance and stability. Through extensive testing the applicant has found that prior art materials for use in footwear have resiliency indices of 0.6 and above. The materials at the 0.6 boundary offer a poor stability. A material having a resiliency index of about 0.5 is an improvement over the prior art since it offers a better stability. The improvement may not be optimal, but it is clearly an improvement. In this respect, the applicant is clearly entitled to obtain coverage on materials having a resiliency index of about 0.5 because they bring about a benefit over the prior art, they are novel, and they are non-obvious.